

**2009 DRAFTING REQUEST**

**Bill**

Received: **01/23/2009**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Kim Hixson (608) 266-9650**

By/Representing: **Russ Whitsel, JLC**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Discrimination**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hixson@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Employment discrimination based on credit history

---

**Instructions:**

Prohibit employment discrimination based on credit history

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 01/24/2009	bkraft 01/27/2009		_____			S&L
/1			jfrantze 01/28/2009	_____	sbasford 01/28/2009	lparisi 07/30/2009	

FE Sent For:

<END>

at  
intro

**2009 DRAFTING REQUEST**

**Bill**

Received: **01/23/2009**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Kim Hixson (608) 266-9650**

By/Representing: **Russ Whitsel, JLC**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Discrimination**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hixson@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Employment discrimination based on credit history

---

**Instructions:**

Prohibit employment discrimination based on credit history

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 01/24/2009	bkraft 01/27/2009		_____			S&L
/1			jfrantze 01/28/2009	_____	sbasford 01/28/2009		

FE Sent For:

**<END>**

**2009 DRAFTING REQUEST**

**Bill**

Received: **01/23/2009**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Kim Hixson (608) 266-9650**

By/Representing: **Russ Whitsel, JLC**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Discrimination**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hixson@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Employment discrimination based on credit history

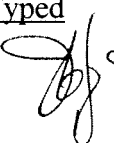

---

**Instructions:**

Prohibit employment discrimination based on credit history

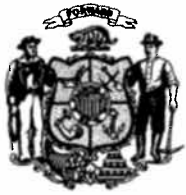
---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise	1 bjk 1/27		 28			

FE Sent For:

<END>



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1752/11

GMM

g Lbjk

S55~

EL 11/24

D-07E

SA ✓  
X-ref ✓

1

<sup>gen.</sup>  
AN ACT ...; **relating to:** employment discrimination based on credit history.

***Analysis by the Legislative Reference Bureau***

Current law prohibits discrimination in employment on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, or use or nonuse of a lawful product off the employer's premises during nonworking hours. Current law also specifies that employment discrimination because of arrest record includes requesting an individual to supply information regarding any arrest record, except when employment depends on the bondability of the individual, and that employment discrimination because of conviction record does not include refusing to employ an individual who has been convicted of an offense the circumstances of which substantially relate to the circumstances of the particular job or who is not bondable when employment depends on the bondability of the individual.

This bill prohibits employment discrimination based on credit history. The bill specifies that employment discrimination because of credit history includes an employer, labor organization, employment agency, licensing agency, or other person requesting an applicant, employee, member, licensee, or any other individual, on an application form or otherwise, to authorize that person to procure the individual's credit history, except that it is not employment discrimination to request that authorization: 1) if the circumstances of an individual's credit history are substantially related to the circumstances of a particular job or licensed activity; or 2) if employment, membership, or licensing depends on the bondability of the individual and the individual may not be bondable due to his or her credit rating. The bill also specifies that it is not employment discrimination because of credit history to refuse to employ, admit, or license, or to bar or terminate from employment, membership, or licensing, any individual if: 1) the circumstances of an individual's

credit history are substantially related to the circumstances of the particular job; or 2) if the individual is not bondable when bondability is required by state or federal law, administrative regulation, or established business practice of the employer.

Under the bill, "credit history" means information provided in a consumer report under the federal Fair Credit Reporting Act (FCRA), which defines "consumer report" as any written, oral, or other communication by a consumer reporting agency bearing on an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is used or expected to be used as a factor in establishing the individual's eligibility for credit, insurance, employment, or any other purpose allowed under federal law. The FCRA further defines "consumer reporting agency" as any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on individuals for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

X

1       **SECTION 1.** 111.31 (1) of the statutes is amended to read:

2       111.31 (1) The legislature finds that the practice of unfair discrimination in  
3       employment against properly qualified individuals by reason of their age, race,  
4       creed, color, disability, marital status, sex, national origin, ancestry, sexual  
5       orientation, arrest record, conviction record, credit history, military service, or use  
6       or nonuse of lawful products off the employer's premises during nonworking hours  
7       substantially and adversely affects the general welfare of the state. Employers,  
8       labor organizations, employment agencies, and licensing agencies that deny  
9       employment opportunities and discriminate in employment against properly  
10      qualified individuals solely because of their age, race, creed, color, disability, marital  
11      status, sex, national origin, ancestry, sexual orientation, arrest record, conviction  
12      record, credit history, military service, or use or nonuse of lawful products off the

1 employer's premises during nonworking hours deprive those individuals of the  
2 earnings that are necessary to maintain a just and decent standard of living.

3 **SECTION 2.** <sup>X</sup> 111.31 (2) of the statutes is amended to read:

4 111.31 (2) It is the intent of the legislature to protect by law the rights of all  
5 individuals to obtain gainful employment and to enjoy privileges free from  
6 employment discrimination because of age, race, creed, color, disability, marital  
7 status, sex, national origin, ancestry, sexual orientation, arrest record, conviction  
8 record, credit history, military service, or use or nonuse of lawful products off the  
9 employer's premises during nonworking hours, and to encourage the full,  
10 nondiscriminatory utilization of the productive resources of the state to the benefit  
11 of the state, the family, and all the people of the state. It is the intent of the legislature  
12 in promulgating this subchapter to encourage employers to evaluate an employee or  
13 applicant for employment based upon the ~~employee's or applicant's~~ individual  
14 qualifications of the employee or applicant rather than upon a particular class to  
15 which the individual may belong.

16 **SECTION 3.** <sup>X</sup> 111.31 (3) of the statutes is amended to read:

17 111.31 (3) In the interpretation and application of this subchapter, and  
18 otherwise, it is declared to be the public policy of the state to encourage and foster  
19 to the fullest extent practicable the employment of all properly qualified individuals  
20 regardless of age, race, creed, color, disability, marital status, sex, national origin,  
21 ancestry, sexual orientation, arrest record, conviction record, credit history, military  
22 service, or use or nonuse of lawful products off the employer's premises during  
23 nonworking hours. Nothing in this subsection requires an affirmative action  
24 program to correct an imbalance in the work force. This subchapter shall be liberally  
25 construed for the accomplishment of this purpose.

X  
1       **SECTION 4.** 111.32 (3g) of the statutes is created to read:

2       111.32 (3g) "Credit history" means information provided in a consumer report,  
3 as defined in 15 USC 1681a (d).

X  
4       **SECTION 5.** 111.321 of the statutes is amended to read:

5       **111.321 Prohibited bases of discrimination.** Subject to ss. 111.33 to 111.36,  
6 no employer, labor organization, employment agency, licensing agency, or other  
7 person may engage in any act of employment discrimination as specified in s. 111.322  
8 against any individual on the basis of age, race, creed, color, disability, marital  
9 status, sex, national origin, ancestry, arrest record, conviction record, credit history,  
10 military service, or use or nonuse of lawful products off the employer's premises  
11 during nonworking hours.

X  
12       **SECTION 6.** 111.333 of the statutes is created to read:

13       **111.333 Credit history; exceptions and special cases.** (1) Employment  
14 discrimination because of credit history includes an employer, labor organization,  
15 employment agency, licensing agency, or other person requesting an applicant,  
16 employee, member, licensee, or any other individual, on an application form or  
17 otherwise, to authorize that person to procure the individual's credit history, except  
18 that it is not employment discrimination to request that authorization if any of the  
19 following apply:

20       (a) The circumstances of an individual's credit history are substantially related  
21 to the circumstances of a particular job or licensed activity.

22       (b) Employment, membership, or licensing depends on the bondability of the  
23 individual under a standard fidelity bond or when an equivalent bond is required by  
24 state or federal law, administrative regulation, or established business practice of  
25 the employer and the individual may not be bondable due to his or her credit history.

**(2)** Notwithstanding s. 111.322, it is not employment discrimination because of credit history to refuse to employ, admit, or license, or to bar or terminate from employment, membership, or licensing, any individual if any of the following apply:

(a) The circumstances of the individual's credit history are substantially related to the circumstances of ~~a~~ <sup>the</sup> particular job or licensed activity.

(b) The individual is not bondable under a standard fidelity bond or an equivalent bond when that bondability is required by state or federal law, administrative regulation, or established business practice of the employer.

## SECTION 7. Initial applicability.

(1) This act first applies to an employee who is affected by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

**(END)**

D-note



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

Date

LRB-1752/1dn

GMM.....

g Lbjk

Representative Hixon:

This draft defines "credit history" by reference to an individual's credit report, as defined in the federal Fair Credit Reporting Act (FCRA) for all of the following reasons:

1. In practice that is where the employer will obtain the individual's credit history.
2. To confront head on and dispose of the issue of federal preemption.

Specifically, you may get an argument that a state prohibition against employment discrimination based on credit history is preempted by the FCRA, which permits an employer to procure a credit report from a credit reporting agency for employment purposes, that is, for evaluating a person for employment, promotion, reassignment, or retention as an employee, if the person authorizes that procurement in writing. The FCRA also permits an employer to take adverse action, that is, to deny employment or make any other decision for employment purposes that adversely affects any current or prospective employee, based on a credit report if the employer provides the person with a copy of the credit report and a description of the person's rights under the FCRA, including the right to dispute any information in the credit report. 15 USC 1681b (b) (1) (A) (i), (2) (A), and (3) (A).

Your response to this argument is that the FCRA does not permit an employer to use information from a credit report in violation of any applicable federal or state equal employment opportunity law. 15 USC 1681b (b) (1) (A) (ii) and (f). This draft, if enacted, would be a state equal employment opportunity law. Therefore, under 15 USC 1681b (b) (1) (A) (ii) and (f), an employer may not use information in a credit report to discriminate in employment based on credit history in violation of this draft.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.wisconsin.gov](mailto:gordon.malaise@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1752/1dn  
GMM:bjk:jf

January 28, 2009

Representative Hixon:

This draft defines "credit history" by reference to an individual's credit report, as defined in the federal Fair Credit Reporting Act (FCRA), for all of the following reasons:

1. In practice that is where the employer will obtain the individual's credit history.
2. To confront head on and dispose of the issue of federal preemption.

Specifically, you may get an argument that a state prohibition against employment discrimination based on credit history is preempted by the FCRA, which permits an employer to procure a credit report from a credit reporting agency for employment purposes, that is, for evaluating a person for employment, promotion, reassignment, or retention as an employee, if the person authorizes that procurement in writing. The FCRA also permits an employer to take adverse action, that is, to deny employment or make any other decision for employment purposes that adversely affects any current or prospective employee, based on a credit report if the employer provides the person with a copy of the credit report and a description of the person's rights under the FCRA, including the right to dispute any information in the credit report. 15 USC 1681b (b) (1) (A) (i), (2) (A), and (3) (A).

Your response to this argument is that the FCRA does not permit an employer to use information from a credit report in violation of any applicable federal or state equal employment opportunity law. 15 USC 1681b (b) (1) (A) (ii) and (f). This draft, if enacted, would be a state equal employment opportunity law. Therefore, under 15 USC 1681b (b) (1) (A) (ii) and (f), an employer may not use information in a credit report to discriminate in employment based on credit history in violation of this draft.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.wisconsin.gov](mailto:gordon.malaise@legis.wisconsin.gov)

**Parisi, Lori**

---

**From:** Vander Meer, John

**Sent:** Wednesday, July 29, 2009 3:38 PM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 09-1752/1 Topic: Employment discrimination based on credit history

Please Jacket LRB 09-1752/1 for the ASSEMBLY.

07/29/2009